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SECOND COMMISSION REPORT

to the EUROPEAN PARLIAMENT and the COUNCIL

on the implementation of the Money Laundering Directive

SUMMARY

This is the second Commission report to the Council and the European Parliament on the implementation of the 1991 Money Laundering Directive. It seeks to respond to the concerns and requests raised by these two institutions in the context of their examination of the Commission's first report presented in 1995.

Given the global nature of the money laundering problem this second report first seeks to situate the European Union's anti-money laundering effort within the wider international context. It thus reports on the efforts undertaken to spread the message to third countries and also records the considerable progress made in the ratification of the two major international money laundering conventions.

The basic situation as regards implementation of the Directive is very satisfactory. All of the Member States have implemented the Directive in their national legislation and only one infringement procedure is currently open.

The report notes the excellent progress made by all the Member States towards the criminalisation of the laundering of the proceeds of a much wider range of serious offences.

It examines the efforts to combat money laundering via bureaux de change and other, possibly unregulated, financial activities. It also notes progress in the range of non-financial activities made subject to the Member States' money laundering legislation and considers the question of the application of anti-money laundering measures to certain non-financial professions, and in particular the legal professions.

In the above and a number of other areas the report makes reference to aspects of the detailed Action Plan to combat organised crime adopted by the Amsterdam European Council.

The report considers the ongoing work in various fora to improve the cooperation and exchange of information between the various authorities concerned with money laundering.

In response to requests from Parliament the Commission also reports on current trends in the techniques used by money launderers and on the work now being undertaken in other fora into the macroeconomic effects of money laundering.

The report also attempts to provide some initial data on the results of the anti-money laundering effort. These show that suspicious transaction reports are being made in every Member State. The numbers of reported prosecutions and convictions are much lower. Similarly the amounts of money confiscated appear to be small.

Lastly, the report concludes that it would now be appropriate to update and extend the Directive in line with the wishes of Parliament and the recommendations of the Action Plan on organised crime.

I. INTRODUCTION

Council Directive 91/308/EEC on prevention of the use of the financial system for the purpose of money laundering was adopted on 10 June 1991[1].

Article 17 of the Directive provides for regular implementation reports to the European Parliament and the Council, to be presented at least every three years.

The Commission's first report (COM(95)54 final) was presented in March 1995. It covered 12 Member States since the three countries which had just joined the European Union at that time were included, along with Iceland and Norway, in a parallel report which the EFTA Standing Committee had prepared covering the EFTA countries belonging to the European Economic Area (EEA).

This second report covers the 15 Member States. The EFTA authorities have prepared a parallel report for the other countries of the EEA, namely Iceland, Liechtenstein and Norway.

The first report described in detail the way in which the main provisions of the Directive had been implemented by the Member States. It pointed to the main difficulties which they had encountered and also sought to indicate both the outstanding aspects and the weak points of the European anti-money laundering effort.

The report was examined by the Council in March 1995. The Council's conclusions form Annex 1 to this report.

In its conclusions the Council laid particular stress on a more coordinated application of the Directive, including the range of criminal offences covered by the anti-money laundering law and the professions and types of undertakings outside the conventional financial sector subject to the Directive's provisions.

The Council also fully agreed with the Commission that the strengthening of systems for countering money laundering depended on closer cooperation between the different authorities involved in fighting this phenomenon.

Finally the Council called on the Commission to continue its analysis of the various questions raised and to report back (within 18 months) on its thinking on these issues.

The European Parliament held a widely based discussion of money laundering. It examined the Commission's report in a number of committees and organised a hearing. Its report and resolution were adopted in June 1996[2]. Parliament's 21 point Resolution forms Annex 2 to this report.

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1 OJ No L 166, 28.6.1991, p.77.

2 Document A4-0187/96 and OJ No C 198, 8.7.1996, p.245.

Parliament called for more information on the practical results of the anti-money laundering effort, on new money laundering techniques being used and on the macro-economic effects of money laundering. It called for the money laundering offence to apply to the laundering of the proceeds of all organised crime and wanted the Directive to cover directly all the occupations and types of undertaking involved or likely to be involved in money laundering. Parliament called on the Commission to report back within two years and to present a proposal for a further directive to fill in the gaps it perceived in the European Union's anti-money laundering defences.

The purpose of this report is to attempt to respond, within a single document, to the concerns of the Council and the European Parliament and, to the extent possible, to supply the additional information requested by Parliament.

In line with the concerns of Parliament and the mandate received from the Council the Commission takes a wide approach in this report. It examines the Union's efforts to combat money laundering as a whole and does not necessarily limit its coverage to the legislation implementing the Directive or to matters falling solely under the first pillar. It also seeks to place the European Union's efforts in the international context.

The following annexes are attached to this report :

- Annex 1 Conclusions of the Council on the Commission's first report
- Annex 2 Resolution of the European Parliament in response to the first report
- Annex 3 Signature, ratification and implementation of the Vienna and Strasbourg Conventions
- Annex 4 Table of criminal offences covered by the Member States' anti-money laundering legislation
- Annex 5 Action point 26 from the report on organised crime presented to and approved by the Amsterdam European Council
- Annex 6 Non-financial activities covered by the Member States' anti-money laundering legislation
- Annex 7 Conclusions of the Egmont Group regarding the possibilities of cooperation between the Member States' financial intelligence units
- Annex 8 Data on suspicious transaction reports
- Annex 9 Results of the reporting system, prosecutions and convictions

II. The EUROPEAN UNION's ANTI-MONEY LAUNDERING EFFORT in the GLOBAL CONTEXT

1. General

The drugs trade and organised crime are highly international and take little account of frontiers. Equally the laundering of the proceeds of serious crime is increasingly an international phenomenon with launderers ready and able to exploit opportunities and weaknesses in States' defences anywhere in the world. The fight against money laundering has to be seen in global terms. However sophisticated and advanced the systems put in place by the countries of the European Union may be, they can easily be undermined by the absence of or gaps in the defences of other countries. It is therefore imperative that the anti-money laundering message be delivered and be heard in every country of the world.

The international fight against money laundering is led by the Financial Action Task Force (FATF). This body, which was created by the G7 Summit in 1989, currently has 28 members, 26 country members, representing the world's major financial markets, plus the European Commission and the Gulf Cooperation Council. All of the 15 EU Member States are members of the FATF.

The FATF adopted its 40 Recommendations in 1990 and updated them in 1996. These are the measures, covering the areas of criminal justice and law enforcement, the financial system and its regulation and international cooperation, which the FATF members have agreed to implement and which all countries are encouraged to adopt.

The FATF has now decided that its work must continue after its current mandate expires in mid-1999. One of its major tasks in the coming years will be to establish a world-wide network in order to spread the anti-money laundering message to all regions of the globe. The FATF's review of its future work and mission was approved by the FATF Ministers and Commissioner Monti on 28 April 1998 and by the G7/8 Summit on 15-17 May 1998.

The United Nations system also plays a major role in the fight against money laundering. In October 1996 the United Nations International Drugs Control Programme (UNDCP) launched a global programme against money laundering to be implemented in cooperation with the UN Crime Prevention and Criminal Justice Division (CPCJD). In this way the UN is broadening its efforts beyond the combating of the laundering of the proceeds derived solely from drugs trafficking. Indeed, the UNDCP now comes under the umbrella of the United Nations Office of Drug Control and Crime Prevention (UNODCCP). The fight against money laundering will be one of the main subjects on the agenda of the UN General Assembly Special Session on drugs to be held in New York in June 1998.

2. Role of the Community Directive

The Community's 1991 money laundering Directive was a landmark in the international effort against money laundering in that it gave legal force within the EU, and subsequently in a majority of the FATF members, to a number of the 40 recommendations relating to the prevention of the misuse of the financial system.

At the same time the Directive clearly recognised the global nature of the problem and made reference to the two major international conventions relating to money laundering, namely the United Nations Convention against illicit traffic in narcotic drugs and psychotropic substances, Vienna, 1988, from which it took the definition of money laundering, and the Council of Europe Convention on laundering, search, seizure and confiscation of the proceeds from crime, Strasbourg, 1990, one of the main purposes of which is to facilitate and promote international cooperation.

Two of the FATF's 40 Recommendations relate to the signing and ratification of these two international Conventions.

3. Implementation of the Vienna and Strasbourg Conventions by the Member States

In a statement by their Government representatives meeting within the Council annexed to the Directive the Member States undertook to enact criminal legislation enabling them to comply with their obligations under the Vienna and Strasbourg Conventions.

All of the Member States have now signed and ratified the Vienna Convention and implementation of the relevant anti-money laundering articles is now complete.

Considerable progress has also been made in respect of the Strasbourg Convention. The precise situation as regards the signing, ratification and implementation of this Convention is set out in Annex 3. All of the Member States have now signed the Convention while 11 have also ratified it. The Action Plan to combat organised crime[3] submitted to and approved by the Amsterdam European Council further commits Member States to complete ratification of this (and other) international instruments by the end of 1998 or provide a written report every six months on the difficulties encountered.

4. Implementation of the Directive, or equivalent standards, by non-member countries

4.1. The countries of the European Economic Area

The Directive applies to Iceland, Liechtenstein and Norway under the EEA Agreement and the EFTA Surveillance Authority has produced a parallel report on implementation in those countries.

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[3] OJ No C 251, 15.8.1997, p.1.

4.2. Central and Eastern European countries

The money laundering Directive is an integral part of the *acquis communautaire* and all candidate countries will be required to implement it. Efforts to assist in this process form part of the pre-accession strategy.

All of the Association Agreements contain an article committing the signatories to combating money laundering in line with the Community and other international standards, notably those of the FATF.

Under the PHARE multi-country programme to combat drugs the Commission is currently involved in technical assistance efforts in the field of anti-money laundering measures in 13 countries of central and eastern Europe.

Reference should also be made to action point 3 of the Action plan to combat organised crime which "encourages the Council and the Commission to define in common with the candidate countries of Central and Eastern Europe, including the Baltic States, a pre-accession Pact on cooperation against crime ...".

4.3. The New Independent States

The Partnership and Cooperation Agreements between the EU and the New Independent States (NIS) contain provisions to establish mutual cooperation in a number of areas related to Justice and Home Affairs, including money laundering. Following the Council's decision to open up the TACIS programme to such actions it is likely that technical assistance projects in this area in Central Asian countries will be identified soon.

4.4. Non-FATF members of the Council of Europe

The Commission is providing a financial contribution towards the Council of Europe mutual evaluation project intended to promote the extension of the FATF 40 recommendations, and the FATF procedures of self-assessment and mutual evaluation to 21 European countries not belonging to the FATF. The Commission contribution will help to finance the evaluation of the PHARE countries.

4.5. The Caribbean

In the Caribbean area, the Commission has launched a major regional money laundering control project in cooperation with the USA. This project will be implemented through the Caribbean Financial Action Task Force (CFATF).

4.6 Andean Community

In February 1998 the five members of the Andean Community (Bolivia, Colombia, Ecuador, Peru and Venezuela) and the Commission signed a financial agreement to establish a regional programme for the fight against drugs, including an anti-money laundering component.

4.7. Asia

In the context of the follow-up to the first ASEM Summit of March 1996, the first Asia-Europe (ASEM) Finance Ministers meeting held in Bangkok in September 1997 agreed "to take concrete steps to strengthen cooperation between the EU and Asia in the fight against money laundering". Proposals were presented to the ASEM II Summit held in London in April 1998 to give effect to this agreement, and the Summit recognised the impact on the transparency of financial systems of the fight against money laundering and the need for cooperation between the ASEM countries. In this context exploratory discussions with the Secretariat of the Asia-Pacific Group on money laundering are currently underway.

4.8. Other non-member countries

Lastly the Commission continues to seek to incorporate an anti-money laundering clause in all the agreements, of whatever type, it concludes with non-member countries. The standard clause refers to efforts and cooperation to avoid money laundering and to the establishment of suitable standards against money laundering equivalent to those adopted in the EU and in international fora such as the FATF.

III. IMPLEMENTATION of the DIRECTIVE by the MEMBER STATES

1. General situation

All of the Member States have now implemented the Money Laundering Directive and have officially notified their implementing legislation to the Commission. Examination of some of the implementing, or supplementary, legislation received only recently is still continuing.

There is only one infringement proceeding currently in progress under Article 169 of the Treaty for non-application or incorrect application of the Directive. This is against Austria and concerns in particular the continued existence in that country of anonymous savings accounts. The Commission decided in October 1997 to bring this matter before the Court of Justice.

2. The prohibition of money laundering

Article 2 of the Directive provides that money laundering shall be "prohibited" in all Member States.

As explained in the Commission's first report it had not been possible to reach agreement in the Council on a requirement in the Directive to criminalise money laundering. Nonetheless the statement annexed to the Directive gave this commitment (albeit outside the framework of the Directive) and all of the Member States have in fact made money laundering a criminal offence.

The Directive only requires the prohibition of the laundering of drugs proceeds, as required by the Vienna Convention, but encourages Member States to apply the approach of the Strasbourg Convention, namely of combating the laundering of the proceeds of a wider range of criminal offences (often referred to as "predicate offences"). The FATF strengthened its relevant recommendation in 1996 to state that "each country should extend the offence of drug money laundering to one based on serious offences". This corresponds to a growing trend based on the dramatic increase in non-drugs based organised crime and on the realisation that having a wide range of predicate offences should improve suspicious transaction reporting and facilitate international cooperation between judicial and police authorities in different countries.

This trend has been very noticeable among the EU Member States. Annex 4 provides an up-to-date picture of the predicate offences covered by their anti-money laundering legislation. All the Member States have or (in the case of Luxembourg) are in the process of extending their legislation to outlaw the laundering of the proceeds of a wide range of serious crime. Parliament's call to the Member States set out in point 5 of its Resolution has in fact already been answered.

This also means that the requirement contained in Action point 26(e) of the Action Plan to combat organised crime that "the reporting obligation in Article 6 of the money laundering Directive should be extended to all offences connected with serious crime" has already been fulfilled to a very large extent.

Reference should also be made here to the Convention on the protection of the European Communities' financial interests and its two additional Protocols. The Member States have undertaken to criminalise the laundering of the proceeds of fraud and corruption within the meaning of the Convention. An essential complement to this commitment will be the extension to such conduct of the identification and reporting obligations.

Despite the progress made by the Member States in the coverage of their anti-money laundering legislation the question nevertheless arises as to whether it is acceptable that the Directive, which remains one of the basic international texts in this area, should fail so clearly now to reflect the current reality.

3. The coverage of financial sector activities

The Directive applies to credit institutions and to financial institutions in the widest sense. Thus virtually all financial-sector intermediaries are subject to the Directive's requirements.

3.1. Bureaux de change

Much attention has been paid to the involvement of money changing offices (bureaux de change) in the process of money laundering. These offices do in fact clearly fall within the scope of the Directive but, as the first report stated, were not subject to prudential supervision in a number of Member States. Given the increasing number of cases in which these offices have been found to be involved in money laundering, virtually all of the Member States have now subjected them to some sort of official supervision.

The current situation is that only two Member States, namely Denmark and the United Kingdom, impose no special requirements on bureaux de change. However, the UK Government has announced that it intends to bring bureaux de change under supervision, while Denmark has reported that it is currently reviewing the situation. The other Member States either have a system of prudential control or impose requirements of registration and authorisation or a fit-and-proper test for managers or shareholders. However, all of the Member States have brought bureaux de change under their anti-money laundering legislation. The United Kingdom and Denmark, while not having a particular supervisory regime, nonetheless report a good response from them in terms of the number of suspicious transactions reported.

3.2. Other financial activities

In its report Parliament also refers to other possibly unregulated activities, such as money transmission services, leasing and factoring. These activities again fall within the scope of the money laundering Directive and Member States should ensure that its obligations, such as client identification, record keeping and reporting of suspicious transactions are respected. In respect of such undertakings Parliament called on the Commission to consider whether and to what extent provisions on supervision can be incorporated into the Directive.

The Commission would point out that the present Directive is not concerned directly with supervisory issues and the imposition of coordinated supervisory or prudential requirements is invariably linked to the facilitation of cross-border services or establishment. Furthermore certain activities do not exist in all the Member States or may only be carried on by other regulated institutions. General company law may also provide certain safeguards.

However, in the event that a particular unregulated financial activity revealed serious money laundering problems, the Commission would expect Member States to take appropriate action, as they have done in the case of bureaux de change. Firstly, this is required by the Directive and secondly all the Member States have accepted FATF Recommendation No 8, which states that "governments should ensure that these [unregulated] institutions are subject to the same anti-money laundering laws or regulations as all other financial institutions and that these laws or regulations are implemented effectively". The Commission would urge Member States to pay careful attention to this area. The Commission itself will continue to monitor the situation closely, notably via the annual FATF Reports on money laundering techniques (see point III.7 of this report) and through the work of the Contact Committee.

4. The coverage of activities outside the financial sector

Article 12 of the Directive provides that "Member States shall ensure that the provisions of this Directive are extended in whole or in part to professions and to categories of undertakings, other than the credit and financial institutions referred to in Article 1, which engage in activities which are particularly likely to be used for money-laundering purposes".

As the first report noted, this article imposes an obligation but its broad wording allows Member States a large measure of discretion in its application.

In order to coordinate as far as possible the application of this provision Article 13(d) gives the Directive's Contact Committee the role of examining "whether a profession or a category of undertaking should be included in the scope of Article 12 where it has been established that such profession or category of undertaking has been used in a Member State for money laundering".

The Contact Committee has been engaged in this task for some time now but has not so far been able to reach a final agreement on a formal Committee Opinion on the application of Article 12. The main sticking point remains the obligations to be imposed on certain professions and in particular the legal professions.

This sensitivity was already apparent in the Council's conclusions on the Commission's first report when it encouraged " a more coordinated application of the Directive, particularly with respect to ..... the professions and types of undertakings which are subject to the Directive's provisions *taking into account the special status of legal professions* ... ".

In point 4 of its resolution Parliament "calls on the Commission, taking account of the preliminary work of the Contact Committee, to submit a proposal for a revision of the Directive .... to include within the direct scope of the Directive those occupations and types of enterprise which can definitely be considered to be involved or likely to be involved directly or indirectly in money laundering".

The work of the Contact Committee in this area has led to the following preliminary conclusions :

- any decision to include a profession in the scope of any individual Member State's legislation should keep the balance between the burdens to be imposed and the real risk of money laundering ;

- it would be incompatible with the spirit of the Directive if professions carrying out activities involving in fact a comparable risk of money laundering were not made subject to similar controls ;

- Member States should carefully consider whether a number of specified professions involved in their country a demonstrable risk of money laundering and, if that were the case, they should bring the professions concerned under certain aspects of the legislation implementing the Directive where this was likely to prove effective ;

- the professions in question are the gambling industry, involving casinos, bookmakers and lotteries; dealers in high-value items, namely real estate agents, jewellers, dealers in precious metals and precious stones, art and antique dealers, auctioneers and coin and stamp dealers ;

- the provisions of the Directive which might be imposed would include the identification requirement, when payment over a specified amount was made by cash or bearer instrument, a record-keeping requirement and a possible obligation to report suspicious transactions; at the same time for any such requirements to be meaningful the necessary procedures to enforce them would have to be established ;

- as regards the professions, a majority of delegations have been able to agree as a general principle that the legal professions could be made subject to the money laundering provisions when they carry out some kind of financial intermediation in financial transactions and agreed to consider carefully the need to apply the anti-money laundering provisions to lawyers and notaries, taking into account their status and the effective scope of their activities ;

- however a number of delegations felt unable to make any distinction between the different services which members of the legal professions might provide to their clients and pointed out that in their countries these (and other) professions' obligation of discretion and client confidentiality was absolute; certain Member States also insisted that they would wish to fully explore the possibilities offered by self-regulation before contemplating making these professions subject to the anti-money laundering legislation.

This is how matters currently stand as regards the discussion of this issue in the Contact Committee.

However the question of the application of anti-money laundering rules to professions and activities outside the conventional financial sector has also been discussed in other fora. The conclusions of the Dublin European Council of December 1996 contain a commitment to the "full application of the Directive on money laundering and its possible extension to those relevant professions and bodies outside the classical financial sector". That same European Council established the High Level Group on Organised Crime with the task of drawing up a comprehensive action plan containing specific recommendations, including realistic timetables for carrying out the work. Its action plan was approved at the Amsterdam European Council in June 1997. Action point 26, much of which is concerned with anti-money laundering measures (and is attached to this report as Annex 5) states in (e) that "the reporting obligation in Article 6 of the money laundering Directive should be extended to ..... persons and professions other than the financial institutions mentioned in the Directive". The target date set to achieve this is the end of 1998.

The Contact Committee continued its discussions on the application of the Directive to vulnerable non-financial professions at its meeting on 11 December 1997, with particular reference to the Action Plan. The Commission noted the ambitious and far-reaching recommendations of the Action Plan in this area, which had been approved at the highest political level.

The discussion concentrated on the professions and in particular on the legal professions. The Commission explored again with the Member States whether a distinction could be made between the activities of the legal professions involving legal advice, defence and litigation and other less-privileged commercial activities performed by these same professions.

As regards the professions the Action Plan on organised crime also contains an action point which may be of relevance to the prevention of the misuse of the services of these professions for the purpose of money laundering. Action point 12 envisages that "measures to shield certain vulnerable professions from influences of organised crime should be developed, for instance through the adoption of codes of conduct. A study should propose specific measures, including legislative action, to prevent notaries, lawyers, accountants and auditors from being exploited or getting involved in organised crime and ensure that their professional organisations are engaged in the establishment and enforcement of such codes of conduct at the European level". A possible joint action is envisaged for mid 1999.

Annex 6 presents the current situation as regards the coverage of non-financial professions by the Member States' anti-money laundering legislation. It will be seen that much progress has been made since the Commission's first report. In addition a number of Member States have plans to further extend the coverage of their legislation. Nonetheless there are still considerable differences in coverage from one State to another.

In view of these differences and the shift, noted by the FATF, of laundering activities from the traditional financial sector to non-financial professions or enterprises, it would seem strange if the ambition reflected in the Action Plan was not matched by that shown by the Commission within its area of competence.

5. Identification of customers in non-face to face transactions

Article 3 of the Directive requires that banks and financial institutions should identify their clients, keep appropriate records and take reasonable measures to seek to identify beneficial owners.

In its report Parliament expressed concern at the weakening of the client identification requirements, particularly in the context of direct banking.

The Contact Committee has discussed the problem of non-face to face transactions on a number of occasions and has agreed a number of principles to be applied to ensure that customers are adequately identified.

The whole area of customer identification has also been reviewed by the FATF, which annexed to its 1996-97 annual report an evaluation of measures taken by FATF members dealing with identification. Its conclusion was that "on the whole, identification regimes in FATF members are deemed satisfactory". It also noted that this question had to be kept under review with particular reference to the development of electronic transactions and financial services through new technologies.

The Commission would agree with these conclusions.

6. Cooperation between authorities concerned with money laundering

This point, which is of crucial importance if the EU and international fight against money laundering is to be successful, was raised both by the Council and by Parliament.

In Article 6 of the Directive reference is made to "the authorities responsible for combating money laundering". It is not specified who those authorities should be nor, in contrast with other directives in the financial sector, is any specific provision made for cross frontier cooperation between those authorities.

The Commission's first report noted that the Directive made no attempt to harmonise the relevant law enforcement aspects, including the nature and organisation of the authorities which should receive the suspicious transaction reports, the procedures to be followed once the information had been transmitted and the sharing of information with other national and foreign authorities.

The first report stated, however, that appropriate coordination on these and other matters related to law enforcement would contribute to reinforcing the efficiency of the reporting scheme in particular and of the anti-money laundering system as a whole.

A first point to be made is that full implementation of the Strasbourg Convention of the Council of Europe by all the Member States would provide an improved basis for international cooperation. As indicated above (see point II.3) there seems to be a genuine commitment to achieve this objective as rapidly as possible.

However, even this may not be enough. Article 18 of the Strasbourg Convention still contains numerous grounds on which co-operation may be refused.

Various efforts are already under way to improve in particular the exchange of information :

6.1. Exchange of information and co-operation between the bodies set up to receive suspicious transaction reports

Article 6 of the Directive implies that Member States must designate an authority or authorities to receive suspicious transaction reports. These bodies are sometimes referred to as Financial Intelligence Units or FIUs.

The Directive does not specify what form those bodies should take and, in contrast to other Community financial services legislation, does not contain provisions on professional secrecy and on the exchange of information. Given the different status and role of the FIUs as they have developed in the Member States (see below) it would be extremely difficult now fully to coordinate this aspect of the anti-money laundering effort under the first pillar of EU law. However, given the importance of this issue the Directive could perhaps set out some provisions for relations between the administrative FIUs while encouraging cooperation with and between those of a different type.

In June 1995 the US Financial Crimes Enforcement Network (FINCEN) and the Belgian Cellule de traitement des informations financières (CTIF) organised in the Egmont Palace in Brussels the first international meeting of FIUs. This Egmont Group has now met on five occasions, has become a genuine international forum and, though having no official status, has become an essential element in the international fight against money laundering.

The general objectives of the Egmont Group can be summarised as follows[4] :

- to establish the list of all FIUs
- to organise meetings to discuss operational problems
- to share the experience of the Group to assist countries considering or preparing the creation of an FIU
- to encourage and facilitate international cooperation and exchange of information between the various FIUs.

Over 30 countries have participated in the work of the Egmont Group from Europe, the Americas, Asia and Australasia. A number of international organisations, including the Commission, have taken part as observers. The Group has three working parties, covering legal obstacles, means of communication and training.

The legal working party has drawn up a model cooperation agreement or memorandum of understanding (MOU). Via a questionnaire the working party has also attempted to draw up an inventory of the possibilities, conditions and limitations for cooperation between the relevant FIUs of the participating countries.

The main obstacle has been found to be the different nature of the FIUs in different countries. The three main categories are administrative/intermediary, police or judicial authorities, though some may be mixed police/judicial authorities while for others their precise status may not be clear.

The breakdown for the Member States is as follows (source: Egmont Group international cooperation survey) :

- Intermediary body : Belgium, Finland (FSA), France, Greece, Italy, Netherlands, Spain
- Police authority : Austria, Finland (MLID), Germany, Ireland, Sweden, United Kingdom
- Judicial authority : Luxembourg, Portugal
- Mixed police/judicial authority : Denmark

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4 Information based on the 1995-96 annual report of the CTIF.

Problems of cooperation and exchange of information can and do arise because of the different legal nature of the FIUs. This is not always an insurmountable obstacle as some bilateral cooperation agreements do exist even where the nature of the FIUs is different (e.g. between an administrative and a police service). However, certain Member States are currently prevented from concluding such agreements because their law provides that police services can only cooperate with other police services using existing channels.

In any case bilateral agreements are not the ideal solution and a multilateral approach, perhaps based on an EU or international convention, would be preferable. It is clear that a solution to this problem of the flow of information between FIUs would greatly enhance the international effort to combat money laundering.

Annex 7 sets out, as regards the EU Member States, the current conclusions of the Egmont legal working group as regards the general possibility of bilateral agreements and the direct exchange of information.

Another problem affecting the flow of information lies in the special nature and treatment in many Member States of the information resulting from the suspicious transaction reports made by financial institutions to the FIUs. It is often the case that this information is treated as especially confidential (no doubt to win the confidence of the financial sector) and it is laid down that this information should not be automatically circulated in the traditional police/judicial circuits. The FIUs will often filter this information and carry out an initial analysis before it is passed on to these circuits. This filter might itself be a police service but one that is set apart.

6.2. Exchange of money laundering information once it is available to police and judicial authorities

It is necessary to bear this filter function in mind in the context of the feasibility study currently being undertaken in the context of the third pillar concerning an EU-wide computerised data exchange system for money laundering related transaction information for investigation purposes. This project has been discussed in various third pillar bodies and in particular in the Drugs and Organised Crime Working Party. The information in question would already have passed through the filter stage and would be information available to and used by law enforcement authorities. Action point 26(a) of the Action plan on organised crime confirms the commitment to this exercise (see Annex 5). This system, which would take account of the possibilities offered by EDU/Europol, would provide a valuable additional tool to the police efforts against money laundering. It is unlikely, however, that it would do away with the need for enhanced cooperation and exchange of information between the FIUs themselves.

A legal basis for exchange of information is opened up by the second additional Protocol to the Convention on the penal protection of the European Communities' financial interests[5]. Article 7 of the Protocol provides for cooperation between the Member States and the Commission in the fight against the laundering of the proceeds of fraud and corruption against the Communities' financial interests. To this end, the competent authorities in the Member States may exchange information with the Commission so as to make it easier to establish the facts and to ensure effective action against money laundering.

7. Techniques of money laundering (typologies)

In point 3 of its Resolution, Parliament called on the Commission to "report on new types of money laundering arising from changes in business practices and money transfers, and to submit appropriate proposals for combating it".

The European Commission is not itself a direct source of expertise on the different techniques used by money launderers and on the trends in the practices used by criminal elements. It does, however, monitor closely the work and reports of other bodies.

The 1997 World Drugs Report produced by the UNDCP[6] contains an interesting chapter on money laundering and describes various techniques that are currently used.

The most useful regular publication on money laundering techniques is the annual Report on money laundering typologies produced by the FATF. These reports are annexed to the FATF Annual Reports and are publicly available via the FATF website at http://www.oecd.org/fatf/

One of the concluding paragraphs of the 1996-97 FATF report states that "as regards money laundering techniques, the most noticeable trend is the continuing increase in the use by money launderers of non-bank financial institutions and non-financial businesses relative to banking institutions. This is believed to reflect the increased level of compliance by banks with anti-money laundering measures. Traditional methods remain most popular, as is demonstrated by the increase in cash smuggling across national borders, and the smurfing of cash deposits followed by telegraphic transfers to other jurisdictions. In the non-bank financial sector, the use of bureaux de change or money remittance businesses to dispose of criminal proceeds remains the most often cited threat. Money launderers continue to receive the assistance of professional facilitators, who assist in a range of ways to mask the origin and ownership of tainted funds. The use of shell companies, usually incorporated in offshore jurisdictions, is the most common technique, with the use of accounts held by relatives or friends also being popular".

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5 OJ No C221, 19.7.1997, p.12.

6 Oxford University Press 1997 - ISBN 0-19-829299-6

An annex to the same FATF typologies report is concerned with issues concerning new payment technologies. FATF has taken the lead in providing a forum in which to coordinate and facilitate communication between the e-money industry and the law enforcement/regulatory communities and interested international organisations.

The main concerns relate to the possibility of greater ease of transferability of large sums of money, possibly permitting anonymous operation or providing no audit trail.

The general feeling among money laundering experts seems to be that this is a problem for the near future rather than a problem of the moment.

FATF states that "electronic money (e-money) has the potential to make it easier for criminals to hide the source of their proceeds and move those proceeds without detection. And it is safe to assume that if these new systems develop in such ways as to somehow better suit the criminals' needs than existing payment systems, they will use them".

The Action Plan on organised crime provides in action point 5 for a cross-frontier study on high-technology crime and states that "attention should be paid both to illegal practices (such as the use of these technologies by criminal organisations to facilitate their activities) or illegal contents".

The Commission will continue to monitor developments in the area of new technologies very closely.

8. Money laundering and the changeover to the Euro

The physical changeover as from 1 January 2002 will be an enormous operation. The shorter the period the greater will be the pressure on the financial system.

It is anticipated that a vast amount of dormant cash will emerge held by people who do not have bank accounts. By definition these people will not be known to the banks when they seek to change their money. There is a fear that criminal money will also emerge either to be fed into existing bank accounts or to be pre-laundered (exchange of used small denomination notes for new, larger denomination notes).

The Commission has said from the outset that money laundering defences must not be relaxed in the context of the changeover to the single currency. This will clearly apply to the opening of new accounts and to transactions above the ECU 15 000 threshold. However, it will be more difficult for banks to identify suspicious transactions below that threshold, given the pressure they will be under and the appearance at their counters of large numbers of unknown customers.

It has been agreed at the Money Laundering Contact Committee that the Committee will have to examine this question in depth to examine whether any additional safeguards will be needed and would be feasible. Discussions will also need to be held with the banking sector.

9. The macroeconomic effects of money laundering

In point 15 of its Resolution Parliament requests the Commission to report on the possible monetary and other macroeconomic effects of money laundering.

The Commission has not itself carried out any research in this area, nor does it have the resources to do so. Indeed the only body which has carried out work in this interesting but extremely complex area appears to be the International Monetary Fund (IMF).

The FATF itself, in its albeit limited examination of this topic, has also relied on the IMF to launch the discussion. The IMF presented a staff statement on this subject at the FATF Plenary in June 1996. Two IMF working papers have also been issued[7].

The following paragraphs quote extensively from a review of these two papers published in the 29 July 1996 edition of the IMF Survey.

It is concluded that although difficult to measure, the magnitude of the sums involved and the extent of the criminal activities that generate [criminal] income have implications for both the domestic and the international allocation of resources and macroeconomic stability.

Although, the IMF reports, there is currently no theoretical literature on the macroeconomic effects of money laundering, indirect macro-based empirical research and related studies of crime and the underground economy, coupled with the pervasive role of money laundering in illegal activity, suggest that money laundering may be sufficiently widespread to exert an independent impact on the macroeconomy.

The common theme of the available research is that if crime, underground activity, and the associated money laundering occur on a sufficiently large scale, policy makers must take them into account.

Money launderers generally do not look for the highest rate of return on the money they launder, but for the place or investment that most easily allows the recycling of their money - even if this requires accepting a lower rate of return. These movements may well be in directions opposite to those that would be expected on the basis of economic fundamentals. Money may therefore move from countries with good economic policies and activities with higher rates of return to countries with poorer policies and activities with lower rates of return. Thus, because of money laundering the world's capital tends to be invested less optimally than in the absence of such activities. As a consequence of such counterintuitive capital movements, policymakers may be confused about the policies to be pursued and may respond inappropriately. For example, a shift in apparent money demand - owing to money laundering that is nowhere reflected in the data - could have consequences for interest and exchange rate volatility.

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7 "Money laundering and the international financial system " by Vito Tanzi, working paper No 96/55 and "Macroeconomic implications of money laundering" by Peter J. Quirk, working paper No 96/66.

At the national level, therefore, large financial flows related to money laundering could influence variables such as exchange rates and interest rates. On the international level, capital movements originating from laundering activities - especially when they are seen as temporary - could have destabilising effects because of the integrated nature of global financial markets. Financial difficulties originating in one centre can easily spread to others, thus transforming a national problem into a systemic one.

The two working papers both emphasise that the development of efficient and stable capital markets requires that participants have full confidence in them. If markets were to be contaminated by money controlled by criminal elements, they would react more dramatically to rumours and false statistics, thus generating more instability.

The transparency and soundness of financial markets are key elements in the effective functioning of economies, and money laundering can threaten both. Criminally obtained money can corrupt financial market officials, and the damage can be long lasting, because the credibility of markets, though quickly lost, takes a long time to be rebuilt.

In its presentation to the FATF Plenary the IMF summarised the potential macroecomic consequences of money laundering as follows :

- changes in the demand for money that seem unrelated to measured changes in fundamentals
- volatility in exchange rates and interest rates due to unanticipated cross-border transfers of funds
- increased instability of liabilities and heightened risks for asset quality for financial institutions, creating systemic risks for the stability of the financial sector and for monetary developments generally
- adverse effects on tax collection and the allocation of public expenditures due to misreporting of income and wealth
- contamination effects on legal transactions as transactors become concerned about possible criminal involvement, and
- other country-specific distributional effects or asset price bubbles due to disposition of "black money".

The IMF concluded that it intended to examine closely the implications of money laundering, particularly in respect of those countries where an analysis of money laundering is particularly important for understanding the behaviour of the macroeconomy (for example, in countries where drugs or other illegal exports are known to be important or where weaknesses in the fiscal regime encourages money laundering).

The IMF is clearly particularly concerned about the situation in the countries with which it is especially involved. It is recognised that some countries will be much more vulnerable than others. When this point of Parliament's resolution was discussed in the Money Laundering Contact Committee (November 1996) one delegation stated that any macroeconomic effect of money laundering was probably only marginal in a major industrialised country.

Although this view was not contradicted the Committee felt that the Commission should as a minimum try to monitor the work being carried on in this technical and specialist area in other fora. This the Commission will endeavour to do.

10. The results of the anti-money laundering effort

In its discussions of the Commission's first report Parliament attached great importance to the collection of information on the results of the considerable efforts being made to combat money laundering. Indeed point 1 of Parliament's resolution links the full transposition of the Directive with the presentation of a detailed report indicating the number of suspicious transactions reported, the number of money laundering cases and convictions and the amounts of money confiscated.

Before reporting on its efforts to obtain the information sought by Parliament, the Commission would wish to stress once again the preventive objective of the directive. This is reflected in its title which refers to the "prevention of the use of the financial system for the purpose of money laundering".

Ideally potential money launderers should find the financial system well defended and should be discouraged from attempting to use it. There is some evidence that this is happening. Increases in cross-frontier movements of cash, the search for laundering possibilities outside the traditional financial sector and reported increases in the actual cost of money laundering point to some success in making money laundering more difficult and expensive for organised crime.

The Commission and the Member States therefore believe that it would be wrong to judge the results of the Directive in particular and of the anti-money laundering effort in general solely on the basis of certain relatively crude statistical indicators.

At the same time, the system of the Directive is based on the monitoring by the financial sector of unusual or suspicious behaviour and the obligatory reporting of such behaviour to the authorities. The response in terms of numbers of reports made does provide an indication of the effort made and of the effectiveness of the systems put in place. The financial sector, and the banking sector in particular, has made considerable efforts and undertaken considerable expenditure to make the system effective. They have themselves been calling for feedback to show that their efforts are worthwhile and to enable them to further develop their response.

Annex 8 shows the number of suspicious transactions reported to the authorities in the Member States. Although it should be borne in mind that the range of persons under an obligation to report suspicions and the range of suspected criminal behaviour (predicate offences) which should give rise to reports differ from one Member State to another the data reported show that the suspicious transaction reporting system appears to be working fairly well.

On the other hand, much less data is currently available on the prosecutions, convictions and seizures of money resulting, in whole or in part, from the suspicious transactions reports.

A number of Member States do not have a separate money laundering offence and prosecute under the heading of "receiving". This probably precludes the collection of separate data on money laundering cases.

In other cases the financial intelligence unit (FIU) serves as a filter and will only pass on a proportion of the cases it examines to the judicial or police authorities, at which point it may lose touch with the particular case. It would appear that there is not always detailed feedback from those authorities to the FIU which would enable it to maintain a record of the number of reports leading to prosecution and conviction.

The lengthy nature of many investigations and prosecutions also makes it difficult to provide results data, especially when the anti-money laundering systems have only recently been put in play or are still evolving. Furthermore several Member States provided data in a form which was not readily comparable with that obtained from others. The relatively simple form of questionnaire sent by the Commission was clearly difficult for certain Member States to complete and the data received did not always lend itself to summarisation in tabular form.

Annex 9 attempts to provide some indication of results of the suspicious transaction reporting system and of the number of prosecutions and/or convictions for money laundering in number of Member States. It is clear that a considerable effort would be necessary in a number of Member States in order to provide more useful figures. In certain Member States data on money laundering prosecutions and convictions simply does not exist at present

Similarly, little data is available so far on amounts of money seized and/or confiscated. Once again the exercise of data collection is inherently difficult. Cases are long and complex and amounts may remain frozen for long periods before being definitively seized or ultimately returned. It does not appear that large amounts are being confiscated and there are indications, from certain Member States, that much of the money seized or frozen ultimately has to be returned or released.

Examples of the information supplied to the Commission are as follows : Since the creation of the Belgian FIU in December 1993, an amount of BF 3 116 million has been confiscated in cases following disclosures made to the FIU. Denmark reported that some DKK 50 million had been confiscated, DKK 18 million had been paid back or paid in damages and DKK 12 million had been imposed as supplementary fines. Ireland reports the seizure of £IRL 15 500. In Italy, the figures for 1996 showed the following amounts being seized (not confiscated): Lit 3 002 million under Article 648 bis of the Criminal Code (money laundering) and Lit 68 631 million under Article 648 ter (use of money, goods or assets or unlawful origin). The UK confiscated nearly £ 10.5 million in 1996. Luxembourg has seized over LUF 300 million in connection with the cases it is prosecuting and has also given effect to a confiscation order for some DEM 200 000 issued by the German courts. The conviction in Portugal resulted in the confiscation of ESC 2.5 million, while investigations are in hand concerning almost ESC 1 800 million in cash and property. Sweden reports that a total of KR 124 million was seized or otherwise secured in 1996-97.

The Commission does not pretend that the amount of data it is able to supply to the Council and Parliament at this stage is satisfactory. The Commission will continue to work with the Member States in the Contact Committee to improve the situation, but is fully aware that this will not be easy. The involvement of judicial and police authorities under the third pillar and of EDU/Europol will without doubt also be necessary.

There may also be the potential for a contribution, at least in the medium or longer term, from the European Monitoring Centre on Drugs and Drug Addiction. Council Regulation (EC) 302/93 in paragraph 5 of its Annex A includes the collection of information on money laundering within the Centre's fifth priority area of work.

IV. CONCLUSIONS

This second Commission report to the Council and Parliament on the implementation of the 1991 anti-money laundering Directive confirms that this legislation has been applied conscientiously in all the Member States.

The Member States of the European Union thus continue to demonstrate their commitment to fighting against money laundering and to set a good example to our neighbours in Europe and to countries further afield.

The global nature of the problem and the need for a global response are reflected in the Member States' and Commission's continued support for the Financial Action Task Force, and in the anti-money laundering technical assistance being provided via PHARE, in the Caribbean and in other regions.

This reflects the realisation that the European Union's money laundering defences, however tight they may be, can easily be compromised by weaknesses elsewhere.

Member States' legislation is not, however, limited to the implementation of the Directive. Even apart from the purely third pillar aspects, the Member States' readiness to further develop this legislation beyond what is required by the Directive is proof that they fully realise the long-term and evolving nature of the threat that is posed by money laundering and of the effort that is required to combat it.

This evolution means that the 1991 money laundering Directive risks appearing somewhat out-of-date in certain respects and this naturally poses the question of whether it should be updated.

The first issue that needs to be considered in this context is that of the prohibition of money laundering. Is it necessary, to quote the updated FATF recommendation, "to extend the offence of drug money laundering to one based on serious offences" ? As Annex 4 shows, all the Member States have already made considerable progress in this direction.

At the same time, if the Directive were to be amended to cover other predicate offences, this would again raise the issue of prohibition as opposed to criminalisation. Criminalisation via the Directive continues to be rejected by a number of Member States, which would appear to leave a wider prohibition as the best option. Furthermore, given the obvious difficulty of reaching an agreed definition of what constitutes "serious crime", it is most probable that even an amended Directive would leave scope for differences in coverage between one Member State and another and would not achieve full harmonisation in this area.

Nevertheless, the Commission believes that the need to keep this important instrument up-to-date argues strongly in favour of a widening of the range of predicate offences covered.

As regards the activities falling within the scope of the Directive it is clear that the coverage of the financial sector is fairly comprehensive.

On the other hand many activities and professions outside the financial sector are already or are potentially vulnerable to money laundering. The situation is in constant evolution as launderers seek new openings.

Article 12 of the 1991 Directive shows that Member States were already then aware of the dangers. They committed themselves to apply provisions of the Directive as appropriate to activities outside the financial sector when there was a real danger of money laundering.

Annex 6 shows that Member States have indeed been ready to put this commitment into effect in an increasing number of cases, and as their experience of combating money laundering develops.

In adopting the Action Plan on organised crime in June 1997, following its approval by the Justice and Home Affairs Council, the Heads of State or Government of the EU Member States have now given their backing to a general extension by the end of 1998 of the suspicious transaction reporting requirement to persons and professions outside the financial sector. Although this is not spelt out, it is the Commission's view that an obligation to report suspicious transactions presupposes corresponding customer identification and record-keeping requirements.

This being the case, the Commission must be prepared to assume its responsibilities under its first pillar competence. Accordingly the Commission has concluded that a new directive is needed and its services have begun work on a new proposal for a directive, the main provision of which will be a major extension outside the financial sector of the obligation to report suspicions of money laundering.

The Council's conclusions on the Commission's first report laid particular emphasis on cooperation between anti-money laundering authorities. The Commission supports and has agreed to finance, under the Oisin programme, the feasibility study for an information exchange system relating to money laundering information held by the EU police authorities. As regards the exchange of money laundering information between financial intelligence units (FIUs) the Commission is concerned by the difficulties (as reflected in Annex 7) which still appear to prevent the communication and exchange of information between certain units having a different legal status.

As regards the protection of the European Communities' financial interests, an exchange of information between the police and judicial prosecution authorities and the Commission is already provided for. However, a structured cooperation and exchange of information between the FIUs themselves and between them and the Commission at the level of administrative mutual assistance is also needed. For this purpose a clearly defined legal framework should be established at Community level.

The Commission commends the excellent work, at an increasingly international level, carried out by the Egmont Group. It invites the Member States to consider whether it might be worthwhile to bring together the FIUs of the Member States to discuss ways of promoting improved cooperation within the European Union context.

At the same time the Commission services are urgently considering whether the proposal to update and extend the 1991 Directive could usefully address any of the issues relating to relations between FIUs.

Finally, as regards the results of the money laundering effort, the Commission will continue to seek to be able to provide more detailed and more comprehensive statistics. The Commission notes the interest of Europol in this area and believes that Europol will be able to play an important role in the collection of data on prosecutions, convictions and asset confiscations. The Commission proposes henceforward to include results data in every implementation report it presents to the Council and Parliament.

Despite the relative lack of statistics it can be concluded that while the financial sector's response has generally been good in terms of the number of suspicious transaction reports made to the competent authorities it does not seem that this effort is at present being translated into large numbers of prosecutions, convictions or asset confiscations. The Commission would stress once again that the directive has an important preventive role and believes that the directive has been successful in making access to the EU's financial system more difficult for criminal money. At the same time it is clear that money laundering is going on and that suspicious transaction reports must be pinpointing a proportion of that criminal money. That being the case it has to be noted that the results beyond the directive in the police and judicial spheres appear to be limited, even if on the increase. While it is not within the remit of this report to analyse the reasons for this situation, it is clearly crucial that the commitment of the financial sector, and increasingly of the other sectors called on to participate in the fight against money laundering, should be justified in terms of a successful criminal law response. There is no doubt that this is an area in which much further work is needed.

COUNCIL CONCLUSIONS

The Council has examined the first Commission report on the implementation of the Directive concerning the fight against money laundering.

The Council noted with great interest the analysis set out by the Commission in its report as well as the conclusions which were drawn. The Council largely agrees with those conclusions.

As the Commission points out, the application of the Directive has had a clear impact on the setting-up by the Member States of systems for countering money laundering. The progress already achieved is very encouraging but there is a need for continued efforts at national, as well as at European and international levels, to increase the effectiveness of systems for countering money laundering.

The Council invites Member States to take the necessary steps to ensure full and complete application of the Directive.

It notes with satisfaction that the possibility is being explored of bringing about a more coordinated application of the Directive, particularly with respect to the activities brought within its scope and to the professions and types of undertakings which are subject to the Directive's provisions, taking into account the special status of legal professions.

The Council would like the Commission to continue to reflect on these questions in close collaboration with the Member States' representatives, meeting in the context of the Contact Committee set up by the Directive.

The Council agrees entirely with the Commission's view that the strengthening of systems for countering money laundering depends on closer cooperation between the different authorities involved in fighting this phenomenon. The Council would like the Commission also to continue to reflect in depth on this question, in accordance with its powers. More generally, requests all the relevant bodies to step up their discussions and to increase their cooperation in this area whenever necessary.

The Council invites the Commission to pursue the study of these different questions and to submit to it any appropriate proposals, taking account of experience gained since the adoption of the Directive, of its implementation in each of the Member States, and of work carried out on these same questions by other international bodies. In any event, the Council invites the Commission to report to it within eighteen months on its thinking on these questions .

Parliament's Resolution on the first Commission report to the European Parliament and the Council on implementation of Directive 91/308/EEC on money laundering (COM(95)54 - C4-0137/95)
(Official Journal No. C 198, 8-7-1996, p. 245)

The European Parliament,

having regard to Council Directive 91/308/EEC of 10 June 1991 on the prevention of the use of the financial system for the purpose of money laundering (OJ L 166, 28-6-1991, p. 77.),

having regard to the first Commission report on the implementation of the Money Laundering Directive to be submitted to the European Parliament and to the Council (COM(95)54 - C4-0137/95)

having regard to the Council of Europe Convention on laundering, tracing, seizure and confiscation of proceeds of crime concluded in Strasbourg in 1990,

having regard to the UN Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances concluded in Vienna in 1988,

having regard to the recommendations on money laundering adopted by the Council of Ministers of Justice and Home Affairs at its meeting in Copenhagen on 1-2 June 1993,

having regard to the opinion of experts in the fields of banking supervision and prosecution who reported at the meeting of 20 December 1995 of the Committee on Legal Affairs and Citizens' Rights and the Committee on Civil Liberties and Internal Affairs on the problems of implementing and transposing the Directive in practice,

having regard to the Council Act drawing up the Convention based on Article K.3 of the Treaty on European Union on the establishment of a European Police Office (Europol Convention) (OJ C 316, 27-11-1995, p. 1.),

having regard its resolution of 14 March 1996 on Europol (OJ C 96, 1-4-1996, p. 288.),

having regard to the report of the Committee on Legal Affairs and Citizens' Rights and the opinions of the Committee on Civil Liberties and Internal Affairs, the Committee on Budgetary Control and the Committee on Economic and Monetary Affairs and Industrial Policy (A4-0187/96),

A. whereas financial transactions connected with criminal activities are continuing,

B. whereas the European Union's system for combating money laundering is inadequate and in particular does not sufficiently cater for new forms of financial transaction,

C. whereas both within states and at European level new legislative measures are required to ensure comprehensive supervision of all natural and legal persons involved in the commercial conduct of financial transactions,

D. whereas the 1990 Strasbourg Convention already contains provisions on legal assistance which would make it possible to combat the economic use of proceeds of crime efficiently at European level,

E. whereas, although Title VI of the Treaty on European Union contains adequate provisions on cooperation in the fields of justice and home affairs, there is no sign of comprehensive legislative activities being carried out to improve coordination of the work of judicial and police authorities at European level,

F. in the belief that the rapid establishment of a European Police Office pursuant to the Europol Convention could make a major contribution to effective measures to combat money laundering and the crimes giving rise to it,

G. whereas, in its recommendations of 1993, the Council of Ministers of Justice and Home Affairs described both the ratification and implementation of the 1990 Strasbourg Convention and the involvement of Europol as important steps to combat money laundering,

1. Calls on the Commission to ensure full transposition of the Directive and submit within the next two years a detailed report indicating the number of transactions reported, the number of proven cases of money laundering, the number of people convicted and the amounts confiscated ;

2. Takes the view that the European Union's system for combating money laundering should be organised more efficiently and adapted in accordance with technical developments in financial transactions ;

3. Calls on the Commission, therefore, to report on new types of money laundering arising from changes in business practices and money transfers, and to submit appropriate proposals for combating it as part of a revision of the Directive ;

4. Calls on the Commission, taking account of the preliminary work of the Contact Committee, to submit a proposal for a revision of the Directive as quickly as possible, and not later than 6 March 1998, to include within its direct scope those occupations and types of enterprise which can definitely be considered to be involved or likely to be involved directly or indirectly in money laundering ;

5. Calls on the Member States, insofar as they have not already done so, to extend their legislation on combating money laundering not only to money derived from drugs trafficking but to all money acquired from professional and organised crime ;

6. Welcomes the Commission's aim of making explicit and binding reference to the provisions of the money laundering directive in all future partnership and association agreements and stepping up cooperation with the respective contracting parties in this field ;

7. Calls on the Member States to ratify and apply the UN Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances adopted in Vienna on 19 December 1988 and the Council of Europe Convention on laundering, tracing, seizure and confiscation of proceeds of crime opened for signature in Strasbourg on 8 November 1990, which the Member States undertook to do in the 'Declaration by the representatives of the governments of the Member States meeting within the Council' published in the annex to the Money Laundering Directive ;

8. Considers that appropriate procedural provisions should exist or be introduced in all Member States to make it possible :

(a) for surveillance of telecommunications to be ordered if there are grounds for suspecting that a money laundering offence has been or is about to be committed,

(b) for temporary measures, such as provisional impoundment and seizure, to be taken to prevent the exchange, transfer or disposal of financial property derived from money laundering or criminal offences giving rise to it,

(c) for temporary measures as referred to in (b) to be taken if the competent authorities have information constituting adequate grounds for suspecting an offence,

(d) for the proceeds of money laundering or criminal offences giving rise to it or the financial property acquired with these proceeds to be confiscated ;

9. Calls on the Member States to continue their work on the Europol Convention with a view to conferring on the Court of Justice of the European Communities the jurisdiction called for by Parliament pursuant to Article K.3(2), second indent (c), third subparagraph, and subsequently to ratify and apply the Convention ;

10. Hopes that the authorities of the Member States which are responsible for applying the provisions of the Directive will use the avenues of cooperation which exist ;

11. Stresses that, in order properly to carry out their duties of registration and notification, partly in accordance with Article 5 of the money laundering directive, banks and financial institutions must have trained staff and monitoring capacity in order to be able to provide the requisite expert clarification in the event of suspected money laundering ;

12. Calls on the Commission to set up a system of appropriate incentives to ensure that the individual banks and financial institutions have trained staff and effective monitoring along the lines of those proposed in paragraph 11 ;

13. Considers that both credit and financial institutions as referred to in the second Directive on the coordination of banking law and all other natural and legal persons who carry out financial transactions, or activities particularly likely to be used for money laundering, commercially or on behalf of third parties should actually be included within the scope of the Directive and subject to state supervision ;

14. Considers furthermore that this supervision should be exercised in accordance with uniform criteria throughout Europe ;

15. Requests the Commission, pursuant to Article 17 of the Directive (91/308/EEC), in its second report on the implementation of the directive, to report on the possible monetary effects that potentially stem from illegal money transactions such as :

(a) the velocity of money affected by flow of illegal funds moving between countries of origin and of destination,

(b) the impact on money supplies of countries involved in the circuit of laundering,

(c) the form of investment illegal funds, once laundered, could take,

(d) the transmission of monetary policy in countries involved,

(e) the stability of financial markets situated in the circuit of money laundering and of final destination ;

16. Also requests the Commission, in its second report to act against the causes and activities of illegal money transactions; measures contributing to a solution of the problem should be adopted such as

(a) including articles in trade agreements concerning money laundering to require and ensure that partner countries adopt equivalent standards to those of the European Union,

(b) strengthening articles in the European Agreements with the countries of Central and Eastern Europe concerning money laundering to require and ensure that associated countries adopt equivalent standards to those of the European Union,

(c) strengthening articles in the Agreements on Partnership and Cooperation with the Russian Federation and the New Independent States of the former Soviet Union on money laundering to require and ensure that associated countries adopt equivalent standards to those of the European Union,

(d) the drawing up of a list of 'clean' banks,

(e) ensuring that the Commission and its subcontractors deal only with 'clean' banks,

(f) the vigilant enforcement of prudential supervision within the European Union with regard to the licensing and operation of banks,

(g) including articles in trade agreements regarding the adoption of Prudential Supervision standards to require and ensure that partner countries adopt equivalent standards to those of the European Union ;

17. Wishes to have conclusive proof that money laundering is on the increase and is increasingly powerful in the network of organised crime ;

18. Wishes to make it clear that money laundering can only be tackled effectively if it is tackled on a Europe-wide basis under single control and working in close liaison with the USA ;

19. Calls furthermore on the Commission to propose a measure prohibiting financial involvement in criminal activities and criminalising such involvement in the Member States, Article 100a of the EC Treaty to be used as the legal basis for this measure ;

20. Calls on the Member States to step up action against money laundering and to give support to citizens and firms, by providing information, so as to be able to prevent any involvement in money laundering ;

21. Instructs its President to forward this resolution to the Council, Commission and governments of the Member States.

Signature, ratification and implementation of the Vienna and Strasbourg Conventions

	Vienna Convention			Strasbourg Convention		
	Signature	Ratification	Implementation Art. 3-9	Signature	Ratification	Entry into force Implementation
Belgium	Y	Y	Y	Y	Y	Y
Denmark	Y	Y	Y	Y	Y	Y
Germany	Y	Y	Y	Y	N	N
Greece	Y	Y	Y	Y	N	N
Spain	Y	Y	Y	Y	N	N
France	Y	Y	Y	Y	Y	Y
Ireland	Y	Y	Y	Y	Y	Y
Italy	Y	Y	Y	Y	Y	Y
Luxembourg	Y	Y	Y	Y	N	N
Netherlands	Y	Y	Y	Y	Y	Y
Austria	Y	Y	Y	Y	Y	Y
Portugal	Y	Y	Y	Y	Y	Y
Finland	Y	Y	Y	Y	Y	Y
Sweden	Y	Y	Y	Y	Y	Y
United Kingdom	Y	Y	Y	Y	Y	Y

Criminal activities covered by the Member States' anti-money laundering legislation

Belgium

The Penal Code (Article 505) covers the laundering of the proceeds of all crimes. The specific anti-money laundering legislation (Law of 11-1-1993, as amended) covers the laundering of proceeds linked to crimes involving: terrorism, organised criminality, drugs trafficking, illicit trafficking in arms and other goods, trafficking in clandestine labour, trafficking in human beings, prostitution, illegal use of hormones in animals, trafficking in human organs or tissues, fraud prejudicing the financial interests of the EU, serious and organised tax fraud, corruption of public officials, investment irregularities, swindling, hostage-taking, theft or extortion with violence and threats and fraudulent bankruptcy;

Denmark

The Danish Money Laundering Act refers to assets originating from violation of the Danish Criminal Code (i.e. all crimes). However, "money laundering" is not a separate offence under Danish law but is dealt with under two "receiving" sections of the Criminal Code - S 191(a), which makes it an offence to receive profit from a drug offence under S 191 and S 284, which creates an offence of accepting profits or helping others to enjoy profits from theft, misappropriation of objects found, embezzlement, fraud, computer fraud, breach of trust, extortion, fraud against creditors, smuggling of a particularly serious nature and robbery.

Germany

Money laundering is a criminal offence pursuant to Section 261 of the Criminal Code (Money laundering ; disguising of illegal assets). The money laundering predicate offences are as follows :

- all major crimes (Verbrechen) (i.e. all offences carrying a minimum of one year's imprisonment, e.g. serious forms of trafficking in people, theft and receiving as well as illegal trade in drugs and arms ;
- all less serious crime (Vergehen) under Section 29, subsection 1, first sentence No 1 of the Narcotics Act (Betäubungsmittelgesetz) or Section 29, subsection 1 of the Commodities Control Act (Grundstoffüberwachungsgesetz), in particular illegal trade in narcotics and precursors (a 'Vergehen' is an offence carrying a minimum sentence of less than one year's imprisonment or a fine) ;
- certain 'Vergehen' involving property, fraud, document and corruption offences committed on a commercial basis by a member of a gang formed for recurrent commission of such offences (e.g. commercial and gang fraud) ;
- all Vergehen committed by a member of a criminal association within the meaning of Section 129 of the Criminal Code (e.g. extortion, procuring and illegal gaming).

On 16 January 1998 the Bundestag passed the draft law to improve the fight against organised crime. This will extend considerably the catalogue of predicate offences, especially in the field of organised crime.

Greece

The Greek Money Laundering Law covers trafficking in drugs and weapons, robbery, blackmail, kidnapping, serious larceny, embezzlement or fraud, illegal trade in antiquities, theft of cargo of a vessel, illegal trade in human tissue and organs, smuggling, nuclear crime, prostitution, illegal gambling.

Spain

The Penal Code article 301 covers money laundering under the section on receiving and similar offences. It refers to all serious crime (any crime carrying a prison sentence in excess of 3 years). The offence is considered to be aggravated when it relates to a drugs trafficking offence.

The Spanish Money Laundering Law (of 23-12-1993) has as its objective to combat the laundering of the proceeds of organised crime, terrorism and drugs trafficking.

France

Law No 96-392 of 13-5-1996 amending the Penal Code extended the offence of money laundering to the proceeds of all crimes ("crimes" or "délits").

Ireland

The Criminal Justice Act 1994 criminalises the laundering of the proceeds of "drug trafficking or other criminal activity".

Italy

Law 328/1993 modified articles 648bis and ter of the Criminal Code to criminalise the laundering of the proceeds of all intentional criminal activities ("tutti i delitti non colposi").

Luxembourg

Current legislation only covers offences linked to drug-related money laundering.

However, a draft law currently before the Luxembourg Parliament would extend the range of predicate offences to any crime (carrying a penalty of more than 5 years imprisonment), to offences ("délits") involving organised crime and to certain offences involving minors, prostitution, corruption of young people and arms and munitions.

Netherlands

The definition of the crime of receiving in the Criminal Code (Articles 416 - 417bis) covers the proceeds of any serious offence ("misdrijf").

Austria

The Austrian Penal Code (Articles 165 and 278a) criminalises the laundering of all assets derived from serious crime, namely all crimes ("Verbrechen") which, under Article 17(1) of the Criminal Code, carry a sentence of 3 years imprisonment.

Portugal

Decree Law 15/93 made drug and precursor trafficking a criminal offence and criminalised money laundering. Decree Law 313/93 transposed the money laundering directive into Portuguese law and Decree Law 325/95 extended the range of predicate offences to terrorism, arms trafficking, extortion, kidnapping, prostitution, corruption and various serious economic and financial crimes.

Finland

The money laundering relevant offence in the Finnish Penal Code (the term "money laundering" is not used) covers the proceeds of all offences.

Sweden

It is an offence to launder the proceeds of serious crime. Chapter 9 of the Swedish Penal Code, on receiving, states that it is an offence to intentionally or by negligence launder the proceeds of any serious criminal offence carrying a penalty of imprisonment of more that 6 months. Complicity in money laundering is also criminalised. The term "money laundering" is not, however, used in the Penal Code.

United Kingdom

There is no general definition of the term "money laundering" in the primary legislation. In effect it is an offence to launder the proceeds of serious crime. This would include drug trafficking, terrorism, theft and fraud, robbery, forgery and counterfeiting, illegal deposit taking, blackmail and extortion (essentially any conduct which would constitute an "indictable offence" in the UK).

Action plan to combat organised crime

26. In the field of money-laundering and confiscation of the proceeds from crime, the following measures should be envisaged :

(a) to improve the international exchange of police data, it is necessary to set up a system for exchanging information concerning suspected money-laundering at the European level, in conformity with the relevant rules relating to data protection. To this end, the Europol Convention should be supplemented with a provision permitting Europol to be instrumental therein (see political guideline No 10) ;

(b) criminalisation of laundering of the proceeds of crime should be made as general as possible, and a legal basis should be created for as broad as possible a range of powers of investigation into it. The opportunity of extending laundering to negligent behaviour should be examined. A study should be undertaken with a view to strengthening the tracing and seizure of illegal assets and of the enforcement of court decisions on the confiscation of assets of organised crime (see political guideline No 11) ;

(c) confiscation rules should be introduced which enable confiscation regardless of the presence of the offender, such as when the offender has died or absconded (see political guideline No 11) ;

(d) there should be a study of the possibility to share, at the level of Member States, assets, confiscated following international cooperation (see political guideline No 11) ;

(e) the reporting obligation in Article 6 of the Money-Laundering Directive should be extended to all offences connected with serious crime and to persons and professions other than the financial institutions mentioned in the Directive. Member States should examine the opportunity of making the failure to report suspicious transactions liable to dissuasive sanctions (see political guideline No 11). At the same time, fiscal authorities should be subjected in the national law to a similar reporting obligation for transactions connected with organised crime, at least for transactions relating to VAT and excise. Cooperation between contact points under the Directive need to be improved ;

(f) addressing the issue of money-laundering on the Internet and via electronic money products and requiring, in electronic payment and message systems, that the messages sent give details of the originator and the beneficiary (see political guideline No 11) ;

(g) preventing an excessive use of cash payments and cash currency exchanges by natural and legal persons from serving to cover up the conversion of the proceeds from crime into other property (see political guideline No 11) ;

Moreover, the Council and the Commission should consider in the light of existing national and international instruments the need to put in place common provisions to combat organised crime in the fields of economic and commercial counterfeiting as well as counterfeiting and falsification of banknotes and coins in view of the introduction of the single currency.

Target date : end 1998.

Responsible : Council/Europol/Commission.

Non-financial sector activities covered by the Member States' anti-money laundering legislation

Belgium	A draft law will extend coverage to notaries, bailiffs (huissiers de justice), accountants and auditors, estate agents, casinos and transporters of funds
Denmark	Casinos
Germany	Casinos, auctioneers, other businesses not already subject to the obligation to cooperate under the money laundering law and any person who administers another person's assets against payment
Greece	Casinos
Spain	Casinos, real-estate management companies, estate agents, jewellers, antique dealers, institutions involved in numismatics and philately
France	All persons who professionally advise upon, execute or control operations involving capital movements are obliged to notify the authorities of any transactions which they know to be related to money laundering. Certain limits are also placed on cash transactions.
Ireland	Government has announced its intention to cover solicitors, auctioneers, estate agents and accountants
Italy	Transactions over LIT 20 million must be carried out through a financial intermediary. New legislation adopted in 1997 provides for an accelerated procedure whereby non-financial activities can be brought under the anti-money laundering legislation.
Luxembourg	The draft law covers casinos, games of chance, auditors and notaries.
Netherlands	Casinos. Notaries have announced voluntary scheme to report very suspicious transactions indicating serious cases of money laundering. Lawyers and accountants already have a similar arrangement.
Austria	Casinos
Portugal	Casinos, real estate agents (brokers and dealers), real estate management companies, companies organising gambling or lotteries, antique/art dealers, jewellers, aircraft, boat and car dealers

Finland	(Draft legislation covers casinos, betting offices and real estate agents)
Sweden	Companies administering trusts
UK	The principal legislation covers all persons. The money laundering regulations cover all persons and institutions, including lawyers and accountants, when undertaking banking, investment or insurance-related business.

Financial intelligence units
Findings of the Egmont Group as regards cooperation / exchange of information

General possibility of bilateral agreements / direct exchange of information

1. For intelligence purposes

Italy, Portugal, Sweden

2. For intelligence purposes and for criminal investigation or prosecution purposes :

Belgium, France, Netherlands, Spain, UK

Limited

Austria	No exchange with administrative units ; no law enforcement information
Denmark, Germany,	
Luxembourg	No exchange with administrative units
Ireland	No exchange with administrative units and judicial authorities
Finland (FSA)	No exchange with police or judicial authorities ; no law enforcement information

Number of suspicious transaction reports

MEMBER STATES	1994	1995	1996	1997
Belgium[8]	2183	3926	5771	7747
Denmark	200	174	254	
Germany	3282	2935	3289	
Greece				38
Spain		163	670	
France	684	866	902	1213
Ireland		199 (part)	378	
Italy	1034	2961	3218	
Luxembourg[9]		75	77	
Netherlands (unusual) (suspicious)	14 753 3546	15 007 2994	16 087 2 572	+/-17 000
Austria	346	310	301	
Portugal	17	85	115	129
Finland	223	190	232	206
Sweden	429	391	502	909
United Kingdom	15 007	13 170	16 125	14 148

[8] The figures for Belgium relate to 564, 795, 1317 and 1484 cases respectively.

[9] The reports for the two years relate to 901 and 3264 transactions respectively.

Results of the reporting system, prosecutions and convictions

Belgium Cases transmitted to the Crown Prosecutor: 1994 – 117; 1995 – 149 ; 1996 – 321 and 1997 – 495. Since 1994 there have been convictions in 48 cases following reports from the Belgian FIU to the judicial authorities.

Denmark Comprehensive statistics on prosecutions and convictions are not available, though it is known that there have been a number of convictions for drug money laundering (7 in 1994 and 5 in 1995). As regards the results of the reporting system, 35 reports have resulted in 26 cases (various offences) in which 49 persons have been convicted or have agreed to pay administrative fines. One person has been acquitted.

Germany 16 persons were convicted in 1994, 15 in 1995 and 24 in 1996.

Greece Of the 38 cases reported to the Committee set up under Law No 2331 of 24.8.1995, 13 cases have been sent to the Public Prosecutor

Spain Suspicious transactions passed on to police or judicial authorities : 1995 – 19, 1996 – 165.

France Dossiers passed to judicial authorities : 1994 – 22 ; 1995 – 30 : 1996 – 47 ; 1997 – 75. As of end 96, there had been 34 definitive convictions (25 since 1993). However, this figure is not exhaustive, other cases being prosecuted under the heading of receiving ('recel').

Ireland One conviction obtained to date.

Italy Convictions for money laundering under Art 648 bis (money laundering) and Article 648ter (use of money, goods or assets of unlawful origin) : 1993 - 72 and 1 ; 1994 – 58 and 4 ; 1995 – 62 and 3 ; 1996 – 116 and 9. Suspicious transaction reports have led to 85 penal proceedings being initiated, 16 for money laundering and 69 for other offences.

Luxembourg Two domestic cases are currently pending

Netherlands No precise statistics on money laundering prosecutions and convictions. Approx. 5 000 "receiving" cases are investigated annually.

Austria	A formal accusation has been made in 13 proceedings. These have led to 3 convictions (1 in 1994 and 2 in 1995), one of which involved two persons; Four trials ended in acquittal. In one of the proceedings which led to a conviction, another Member State was requested to take proceedings against other persons.
Portugal	The reports gave rise to 12 investigations in 1994, 49 in 1995 and 53 in 1996. Prosecutions were launched in 3 cases, involving 26 persons. One person was convicted in 1996
Finland	Between 1994 and 1997, 119 suspicious transaction reports were transferred to pre-trial investigations, leading to 70 criminal cases. Of these cases, by end 1997 the Courts had passed judgement in 13. Proceedings were pending in 4. Charges were being considered in 4. 21 cases were dropped and pre-trial investigations were still continuing in 28.
Sweden	A total of 66 reports were passed to the prosecution authorities for preliminary investigation in the period 1994 – 97. Over the same period there were 21 judgements.
UK	Between 1993 and 1996 there were 25 convictions for money laundering, of which 13 in 1996. Although only 1 prosecution for money laundering resulted from a suspicious transaction report there were over 200 known prosecutions for other offences in 1996 as a result of reports passed on to police or investigative authorities.

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